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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1915.

No. ~~495.~~

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of the State of Illinois.

MOTIONS TO DISMISS, OR AFFIRM, OR TRANSFER TO SUMMARY DOCKET, AND BRIEF AND ARGUMENT IN SUPPORT OF SAID MOTIONS.

EVERETT JENNINGS,
M. F. GALLAGHER,
ATTORNEYS FOR DEFENDANT IN ERROR.

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List of Authorities Cited.

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Now comes the defendant in error, State Public Utilities Commission of Illinois, by Everett Jennings and M. F. Gallagher, its attorneys, and respectfully moves this Honorable Court:

1. To dismiss the writ of error herein on the ground that this court has no jurisdiction thereof, because there is no color of ground for the averment that the judgment of the Supreme Court of Illinois infringes upon the Federal Constitution, or the Act to Regulate Commerce, or places a direct burden on interstate commerce.

2. To affirm the judgment of the Supreme Court of Illinois because it is manifest the writ was taken for delay only, and that the question on which the decision of the cause here depends is so devoid of merit as not to need further argument, having been plainly and repeatedly decided by this court contrary to the position taken in the "Statement of Errors Relied Upon," filed herein by plaintiff in error.

3. If this Honorable Court, upon consideration hereof, refuses to grant either of the foregoing motions, then that the case be transferred for hearing to the summary docket because the case is of such a character as not to justify extended argument.

EVERETT JENNINGS,
M. F. GALLAGHER,
Attorneys for Defendant in Error.

BRIEF OF ARGUMENT IN SUPPORT OF THE FOREGOING MOTIONS.

I.

STATEMENT.

The single question on this record:

Does an order of the Railroad and Warehouse Commission of Illinois fixing a maximum rate between two points in Illinois, for a railroad haul entirely in that state, applicable to traffic only that originates in Illinois, so far encroach upon the power and agencies of the Federal Government to regulate commerce among the states that the order is void?

The Facts.

Poehlmann Bros. Company is an Illinois corporation engaged in the growing and sale of flowers, and has its greenhouses at Morton Grove, Cook County, Illinois. (Trans., page 24.) Morton Grove is a station on the Chicago, Milwaukee & St. Paul Railway, three miles northwest of the corporate limits of Chicago. In its greenhouses, Poehlmann Bros. Company use about 30,000 tons of coal each year and about 500 cars of manure. (Trans., page 15.)

Over 95 per cent. of the coal used by Poehlmann Bros. Company is mined in Illinois (Trans., page 15), and the manure comes from places in and around Chicago. (Trans., page 28.) This freight moves

to Morton Grove via the Chicago, Milwaukee & St. Paul Railway. This carrier receives the cars at Galewood, a station inside of Chicago, where the yards are located on which the cars are transferred to it by other carriers. (Trans., page 27.) The distance from Galewood to Morton Grove, being the entire haul involved in this case, is about 12 miles. (Trans., page 28.) There are no joint through rates on coal to Morton Grove from points in Illinois, or from points in other states. (Trans., pages 11, 16, 27 and 28.) Both on the interstate and intrastate shipments the rate up to Galewood is a separate rate, and the rate from Galewood to Morton Grove is a separate rate. The rates of the carriers hauling the coal to Chicago vary according to point of origin, but in all cases the charge of the Chicago, Milwaukee & St. Paul Railway Company for carrying the coal from Galewood to Morton Grove is 40 cents per ton. This rate of 40 cents a ton is a charge of the Chicago, Milwaukee & St. Paul Railway, published by that carrier, for which it is alone responsible. (Tariff C. M. & St. P. Ry., G. F. D. 2500-B. Transpages 3 and 28.) July 18, 1913, Poehlmann Bros. Company filed a petition with the Railroad and Warehouse Commission of Illinois (predecessor of the present State Public Utilities Commission of Illinois) charging that the rates of 40 cents a ton on coal and on manure from Galewood to Morton Grove were unjust and unreasonable, and after a hearing the Railroad and Warehouse Commission so found, and ordered that rates of 20 cents per ton on coal and 25 cents per ton on manure were just and reasonable rates and should be put into effect by the Chicago, Milwaukee & St. Paul Railroad. (Trans., page 12.)

The complaint and the proceedings before the Railroad and Warehouse Commission were confined to transportation conducted wholly in Illinois, and relief was asked solely as to traffic originating and delivered in Illinois. (See prayer of complaint, Trans., page 5.) The complaint, paragraph 3 (Trans., page 3) shows the distance from Galewood to Morton Grove of 11 miles, and alleges "the said Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, 40 cents per net ton; and that said carrier charges and collects the charges of 40 cents per ton for moving a car of manure from Galewood to Morton Grove. The complainant further shows that there are no through rates from mines in Illinois to Morton Grove." (Trans., page 3.)

Paragraph 4 of the complaint is as follows:

> "Complainant further shows that a charge of 40 cents per net ton on coal and of 40 cents on manure and other materials, for the service of said Chicago, Milwaukee & St. Paul Railway for moving said cars from Galewood to Morton Grove, is unjust, unreasonable, excessive and discriminatory, and in violation of the provisions of the said Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their duties, approved April 13, 1871, and the acts amendatory thereof and supplemental thereto."

In paragraph 11 of the complaint, it is alleged that the complainant is grievously discriminated against and that the charges of 40 cents a ton on coal and manure made by the Chicago, Milwaukee & St. Paul Railroad are unjust and unrea-

sonable, excessive and discriminatory. (Trans., page 4.)

The order of the Railroad and Warehouse Commission was confined to the movement between Galewood and Morton Grove. The order reads (Trans., page 12):

> "It is therefore ordered, adjudged and decreed by the Commission that the said rate of 40 cents per net ton on coal from Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed 20 cents per net ton on coal, and not to exceed 25 cents per net ton on manure from Galewood to Morton Grove, and the defendant, Chicago, Milwaukee & St. Paul Railway Company, is hereby directed to cease and desist from making any greater charge than hereinabove specified on movements of coal and manure from Galewood to Morton Grove, the Commission finding that the charge herein made and specified, is a reasonable charge therefor."

It is true, the complainant asked the Railroad and Warehouse Commission to establish *through rates from mines in Illinois to Morton Grove.* This the Commission did not do, but finding that the rate from Galewood to Morton Grove was unreasonable and excessive as charged in the complaint, it reduced that rate to a fair basis. This was in accordance with the general prayer of the complaint "for such other and further order as this Commission may deem just and reasonable in the premises." (Trans., page 5.)

From this order an appeal was taken by the railroad company to the Circuit Court of Sangamon County, State of Illinois, and the order was affirmed by that court. A further appeal was then taken to

the Supreme Court of Illinois, and the judgment of the Circuit Court of Sangamon County, approving the order of the Railroad and Warehouse Commission, was affirmed. Thereafter this writ of error was sued out.

For this case below, see 268 Ill., page 49. See Appendix hereto.

The question of the sufficiency of the evidence on which to base the order is not here for review. That question is not embraced in the specifications of errors, and is no longer open. (*Hedrick* v. *Ry. Co.*, 167 U. S. 673. See also *Merchants Bank* v. *Pennsylvania*, 167 U. S. 461.) Nor is there any basis in the specification of errors or in the evidence for the contention that the maximum rates fixed are confiscatory. It must be assumed here that the order prescribed just and reasonable rates. The sole contention of plaintiff in error is that the order is beyond the jurisdiction of the state.

II.

POINTS AND AUTHORITIES.

I.

THERE IS NO COLOR OF GROUND FOR THE CONTENTION THAT THE ORDER WHOSE VALIDITY IS DRAWN IN QUESTION VIOLATES PARAGRAPH 3 OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES, AS STATED IN THE FIRST SPECIFICATION OF ERROR.

All the services of this carrier, performed wholly in Illinois, are amenable to state regulation.

Simpson v. *Shepard* (Minnesota Rate Case), 230 U. S. 352.

Munn v. *Illinois*, 94 U. S. 113.

Wabash Ry. v. *Illinois*, 118 U. S. p. 565.

Chicago, Milwaukee & St. Paul Ry. v. *State of Iowa*, 233 U. S. 334.

Illinois Central Railroad Company v. *Mulberry Hill Coal Co.*, 238 U. S. 275.

Illinois Central R. R. Co. v. *Louisville Railroad Commission*, 236 U. S. page 164.

Missouri Pacific Ry. Co. v. *Larabee Mills*, 211 U. S. 612.

Wilmington Transportation Company v. *California Railroad Commission*, 236 U. S. page 156.

Erie R. R. v. *Purdy*, 185 U. S. at page 148.

Northern Pacific Ry. v. *North Dakota*, 216 U. S. 579.

Minneapolis and St. Louis R. R. Co. v. *Minnesota*, 186 U. S. 257.

Atlantic Coast Line v. *Mazursky*, 216 U. S. 122.

The entire contention of the plaintiff in error in this case as shown by the specifications of error is settled adversely to it by the decision of this court in Minnesota Rate Cases, 230 U. S., pages 396, 412, 413, 414, 415, 420, 421, 431, 432 and 433.

In that case this court said (p. 431):

> "It thus clearly appears that, under the established principles governing state action, the State of Minnesota did not transcend the limits of its authority in prescribing the rates here involved, assuming them to be reasonable intrastate rates. It exercised an authority appropriate to its territorial jurisdiction and not opposed to any action thus far taken by Congress."

It is therefore clear, in the absence of further legislation by Congress at least, that the order here involved was within state authority and in no way encroaches upon the regulative system of the federal government.

No doubt has been entertained as to the authority of the states to regulate rates for transportation wholly intrastate.

Minnesota Rate Cases, *supra*, page 415.

The fact that the order here involved may affect interstate commerce indirectly, does not withdraw it from the "undeniable power of the state."

Minnesota Rate Cases, *supra*, page 426, page 410.

This court is asked in this case to do that, which, after great consideration and deliberation, it declined to do in the *Minnesota Rate Cases, i. e.*, "under the guise of construction to provide a more compre-

hensive scheme of regulation than Congress has decided upon."

Minnesota Rate Case, *supra,* page 433.

In the case last cited, which seems to finally remove from the field of debate the precise question presented in the instant case, this court further said:

> "Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It cannot be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to override the accustomed authority of the states without the provisions of a substitute. *On the contrary, the fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject. Missouri Pacific Ry. Co.* v. *Larabee Mills,* 211 U. S. 612, 620, 621."

The order here involved is confined to commerce that begins and ends in Illinois. It fixes a charge for an entirely local haul, the transportation of certain commodities for a distance of eleven and fraction miles all in one county in Illinois. If this order is void because it infringes upon the power of the federal government to regulate commerce then all state authority over rates is extinguished, and there is now no governmental agency that could regulate the charge of the plaintiff in error for this service.

In the case of *Munn* v. *Illinois*, 94 U. S. 113, this court clearly stated the jurisdiction of the states over commerce that begins and ends within a state. There this court said:

> "Of the justice or propriety of the principle which lies at the foundation of the Illinois statute, it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the state, it may be very just and equitable, and it certainly is the province of the state legislature to determine that question."

The order of the state board in this case shows on its face that it applies solely to commerce that is internal, and the order was so interpreted by the Supreme Court of Illinois, and this court has frequently decided that it will give such an order a valid construction if it is susceptible of such construction.

In *Erie Railroad* v. *Purdy*, 185 U. S. at 148, a state statute regulating commerce was attacked because it was a burden upon interstate commerce. This court dismissed the writ of error for want of jurisdiction, saying:

> "But the Court of Appeals held that the statute was intended to apply and applied only to domestic transportation. We accept this view as to the scope and operation of the statute, and assume that it does not require the railroad company to issue mileage kets covering the transportation of passengers from one state to another state. *So that no federal question arising under the commerce clause of the Constitution is here for determination.*"

This court further said in that case:

> "That such a statute, if limited in its scope to transportation wholly within the limits of the state, is a valid exercise of state authority set-

tled by the decision of the Supreme Court of the United States in *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, where it was said: 'It (the state) may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the state.' This doctrine has never been overruled or limited; on the contrary, it is fully recognized in the later cases. *Hennington* v. *Georgia*, 163 U. S. 299; *W. U. Tel. Co.* v. *James*, 162 U. S. 650; *L. S. & M. S. R. Co.* v. *Ohio*, 173 U. S. 285. In *Wabash etc. Ry. Co.* v. *Illinois*, 118 U. S. 557, a statute of Illinois regulating fares was held void solely on the ground that the act, *as interpreted by the Supreme Court of the state*, included cases of transportation partly within and partly without the state. It was there stated: *'If the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the state, disconnected from a continuous transportation* through or into other states, there does not seem *to be any difficulty in holding it to be valid.'* There is nothing in the language of the statutes now before us that shows they were intended to affect any but interstate transportation; but if their interpretation is doubtful 'the courts must so construe a statute as to bring it within the constitutional limits, if it is susceptible of such construction.' *Sage* v. *City of Brooklyn*, 89 N. Y. 189; *People* v. *Terry*, 108 N. Y. 1. Within this principle these statutes must be construed as applying to transportation wholly within the state, and as so construed they do not infringe upon the constitution of the United States."

In *Wabash etc. Railway Co.* v. *Illinois*, 118 U. S. p. 565, this court said:

"It has often been held in this court, and there can be no doubt about it, that there is a commerce wholly within the state which is not

subject to the constitutional provision and the distinction between commerce among the states and the other class of commerce between the citizens of a single state, and conducted within its limits exclusively, is one which has been fully recognizes in this court, although it may not be always easy, where the lines of these classes approach each other, to distinguish between the one and the other. *The Daniel Ball,* 10 Wall. 557; *Hall* v. *De Cuir,* 95 U. S. 485; *Telegraph Co.* v. *Texas,* 105 U. S. 460."

The interpretation and effect given by the Supreme Court of Illinois to the order here attacked is as follows (*C. M. & St. P. Ry.* v. *Public Utilities Commission,* 268 Ill., p. 52):

"Neither the complaint nor the order in any way related to or affected inter-state commerce. The complaint was confined to charges on coal shipped to the complainant from points in this State, the recitals of the order related only to such shipments, and the order did not purport to fix a rate on any inter-State shipment. The argument is, that because a car of coal coming to Galewood from another State would be hauled over the same track by the appellant to Morton Grove and the appellant could not discriminate and charge more for hauling that car than for a car coming from a mine in this State, the commission has discriminated against inter-State commerce and placed an unlawful burden upon it,—which is saying that the State has no concern with or control over rates for transportation which is purely local within its borders if the carrier performs similar service in inter-State commerce. We do not understand that to be the law, or that any doubt has ever been entertained of the authority of the State to regulate rates for transportation that is wholly within the State, although the authority of the State does not extend to the regulation of charges for inter-State transportation or to discrimination against inter-State commerce."

So in *Northern Pacific Ry. Co.* v. *North Dakota*, 216 U. S. 579, the holding of the state court that the rates applied only to transportation within the state, was held to remove the case from any possibility of infringement upon the commerce clause.

For a discussion of the case last cited, see *Minnesota Rate Cases*, 230 U. S. p. 430.

If it can be truly said that the case at bar presents a federal question, nevertheless the power of the state to regulate charges of common carriers for a service between two points within the state, is, as stated by this court in the Minnesota Rate Cases, *supra*, "so fully established" so "acknowledged" and "undeniable" that the present contention can well be characterized as plainly devoid of merit and the judgment on motion affirmed.

II.

THE ORDER UNDER CONSIDERATION DOES NOT CONTRAVENE THE ACT TO REGULATE COMMERCE.

The express provision of the Act to Regulate Commerce is that it has no application to transportation "wholly within one state, and not shipped to or from a foreign country, or from or to any state or country aforesaid." Proviso of Section 1.

See:

Missouri Pacific Ry. Co. v. *Larrabee Mills*, 211 U. S. 612, 621.

Minnesota Rate Case, *supra*, page 418.

From the specifications of error it appears that the position taken by the carrier is that this order in fact

operates to regulate interstate commerce, because coal might come from other states and pass over the same rails from Galewood to Morton Grove, and, on the assumption that all coal is competitive, this carrier might be forced by commercial conditions to accord to interstate shippers the same rate for its portion of the haul. It is obvious that if this possibility renders the order void, then state authority over rates is extinguished, for there is no part of a railroad where such a situation could not arise. (Minnesota Rate Case, *supra*, page 395.) But this contention does not go to the validity of the order or the power of the state to promulgate it. It goes to its possible commercial effect, and if the effect of the order in the future is to cause a discrimination against interstate shippers, such shippers will then have the right to complain of such discrimination to the Interstate Commerce Commission. This is the decision of this court in *Houston East and West Railway Co.* v. *United States,* 234 U. S. 342.

There the validity of an order of the Interstate Commerce Commission was attacked on the ground that it exceeded the authority of that commission. The Commission found that the carriers operating in Texas unjustly discriminated against Shreveport, Louisiana, by maintaining rates within the State of Texas lower than the rates to common points from Shreveport. The lower intrastate rates were compelled by an order of the Railroad and Warehouse Commission of Texas. No one in that case claimed that the order of the Texas board was void. This court held that the Interstate Commerce Commis-

sion had the power and jurisdiction to adjudge and remove a discrimination against interstate traffic resulting from intrastate rates. This court said (page 357):

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier and subject to the authority of the states, or of the agencies created by the states. This was the question recently decided by this court in the Minnesota Rate Cases, *supra.*"

There has been no finding here by the Interstate Commerce Commission that the Chicago, Milwaukee & St. Paul Railway Company by maintaining a rate of 20 cents a ton on coal from Galewood to Morton Grove, is discriminating against interstate shippers. If such rates when made effective cause an unjust discrimination within the meaning of the act to Regulate Commerce, it will be for the Commission, not the courts, to find and remove such discrimination.

Houston & Texas Ry. Co. v. *U. S., supra,* pages 357, 358.

There is, of course, nothing to prevent the carrier giving to shippers of coal in other states the same rate on their coal when hauled from Galewood to Morton Grove as the state board has found just and reasonable and prescribed for Illinois coal.

III.

THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN POEHLMANN BROS. COMPANY V. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, 30 I. C. C. REP. 89.

Specification of Error No. 8, filed by the plaintiff in error in this case, refers to the decision of the

Interstate Commerce Commission in a complaint filed by Poehlmann Bros. Company against the Chicago, Milwaukee & St. Paul Railway Company. That case involved rates on coal from Pennsylvania, Maryland, Ohio and Indiana. Although the order of the Interstate Commerce Commission is not in the record of this case, it will be seen by an examination of the reported opinion that the complaint was dismissed because the Chicago, Milwaukee & St. Paul Railway Company was the only party defendant and the Commission held that the traffic involved was through traffic, the Commission saying (30 I. C. C. Rep. at page 92):

> "The rate specifically attacked, although a separately established rate of the delivering line, can not be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.
>
> Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rates under attack, *we must refrain from expressing any conclusion upon the reasonableness of either rate.*"

It will thus be seen that the Interstate Commerce Commission did not pass upon the question as to what is a reasonable rate from Galewood to Morton Grove, either as a separately established charge, or as a factor in a through rate, applicable to the movement of coal from points in other states. There is of course nothing in the decision of the Interstate

Commerce Commission that affects directly or indirectly the validity of the order of the Illinois board now under consideration.

The only adjudication as to what is a just and reasonable rate from Galewood to Morton Grove is the finding and order of the Railroad and Warehouse Commission of Illinois, namely, 20 cents a ton for the carriage of coal and 25 cents a ton for manure. All presumptions should be in favor of that order.

CONCLUSION.

From the foregoing we conclude and respectfully submit:

1. The claim that the order in question is violative of the commerce clause of the federal constitution, or the Act to Regulate Commerce, suggests a fictitious, not a real, federal question.

2. If the alleged question can be considered real and thereby jurisdiction is conferred, then, the point has been so plainly and repeatedly established against the contention of plaintiff in error, that the judgment should be affirmed on motion.

3. At all events, no extended argument being necessary, the case can properly be dealt with on the summary docket.

Respectfully submitted,

EVERETT JENNINGS,
M. F. GALLAGHER,
Attorneys for Defendant in Error.

APPENDIX.

Opinion of the Supreme Court of Illinois in This Case.

Chicago, Milwaukee & St. Paul Railway Company
vs.
State Public Utilities Commission of Illinois *ex rel.* Poehlmann Bros. Company.
} No. 9959.

Cartwright, C. J. The appellant, the Chicago, Milwaukee & St. Paul Railway Company, charges the *Poehlmann Bros. Company*, a corporation owning and operating two greenhouses at Morton Grove, a village about three miles from the corporate limits of Chicago, 40 cents a ton on carload shipments of coal and 40 cents a ton on carload shipments of manure from Galewood to Morton Grove, a distance of 11½ miles. The Poehlmann Bros. Company filed a complaint with the Railroad and Warehouse Commission, of which the appellee, the State Public Utilities Commission, is the successor, alleging that it was in the business of growing flowers and selling them in Chicago and Morton Grove; that it consumed in the operation of its business about 28,000 tons of bituminous coal per year, a large portion of which was shipped from points in this state, and used about 700 cars of manure each year; that Galewood is a station on the appellant's railroad; and that it made the charges stated from its station of Galewood, where it received cars from other common carriers to Morton Grove. The complainant alleged that the charge was unjust, unreasonable and excessive, and was

discriminatory in relation to charges made for similar service to competitors of the complainant requiring substantially the same service at other points near Chicago, and prayed for an order of the Commission ascertaining and determining reasonable and lawful through rates and charges for transportation of coal from the mines in this state and ordering the appellant to conform thereto, and for such other and further order as the Commission might deem just and reasonable in the premises. The appellant filed an answer denying that the charges of 40 cents per net ton for transporting coal, manure and other materials from Galewood to Morton Grove was unjust, unreasonable, excessive, or discriminatory. After a hearing of the parties and a consideration of the evidence produced, the Commission made an order reciting that complainant had asked for the establishment of through rates, but the only rate attacked was the charge from Galewood to Morton Grove, and the Commission did not feel it necessary to enter, or that it would be justified in entering into the question of through rates or discrimination, believing that the matter could be properly disposed of without entering into those questions. It was ordered that the charge of 40 cents per net ton was unreasonable, and that the rate should be reduced and the charges should not exceed 20 cents per ton on coal and 25 cents per ton on manure from Galewood to Morton Grove. The appellant removed the case by appeal to the Circuit Court of Sangamon County, where the order was affirmed, and a further appeal was prosecuted to this court.

(1) The first proposition of counsel for the ap-

pellant is that, so far as the rate on coal was concerned, the order was outside the scope of the prayer of the complainant, which asked the Commission to establish through rates on coal from the mines in Illinois to complainant's plant at Morton Grove and to establish a reasonable rate for moving manure from Galewood station to Morton Grove, and the Commission did not establish any through rate on coal, but, ignoring the prayer, merely fixed a local rate. There was a prayer for specific relief by the establishment of through rates from the mines to Morton Grove, but the reasonableness of the rate from Galewood to Morton Grove was directly attacked in the complaint as being unjust, unreasonable, and excessive and there was no other fact alleged calling for relief. There was a general prayer for such other and further order as the Commission might deem just and reasonable in the premises, and what the Commission was asked or authorized to do depended rather upon the facts alleged than upon the form of the prayer. The appellant appeared and defended before the Commission, and the only controversy was whether the rate from Galewood to Morton Grove was unreasonable, excessive or discriminatory as between the complainant and its competitors. The Commission found that it was not necessary to enter into the question of discrimination or to establish through rates, and the general prayer based upon the facts alleged was sufficient to authorize the relief granted.

(2, 3) The next proposition of counsel is that the order discriminates against and places a burden upon interstate commerce in violation of the commerce clause of the Federal Constitution, and is

therefore unreasonable, unlawful and void. Neither the complaint nor the order in any way related to or affected interstate commerce. The complaint was confined to charges on coal shipped to the complainant from points in this state, the recitals of the order related only to such shipments, and the order did not purport to fix a rate on any interstate shipment. The argument is that because a car of coal coming to Galewood from another state would be haul over the same track by the appellant to Morton Grove, and the appellant could not discriminate and charge more for hauling that car than for a car coming from a mine in this state, the Commission has discriminated against interstate commerce and placed an unlawful burden upon it—which is saying that the state has no concern with or control over rates for transportation which is purely local within its borders if the carrier performs similar service in interstate commerce. We do not understand that to be the law, or that any doubt has ever been entertained of the authority of the state to regulate rates for transportation that is wholly within the state, although the authority of the state does not extend to the regulation of charges for interstate transportation or to discrimination against interstate commerce. *Wabash, St. Louis & Pacific Railway Co.* v. *Illinois*, 118 U. S. 557, 7 Sup. Ct. 4, 30 L. Ed. 244.

In the case of *Simpson* v. *Shepard*, 230 U. S. 352, 33 Sup. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151 (known as the "Minnesota rate cases"), the court entered into an exhaustive discussion of the relative jurisdiction of the state and national governments over the subject of transportation, intrastate and interstate, with a complete review of the

authorities, and again affirmed the doctrine that the power of the Federal Government to regulate transportation is limited to interstate commerce, and the authority of the states to regulate transportation which begins and ends within their borders has been in no wise restricted by the Federal act. The court said that the doctrine was fully established by its decisions that the state could not prescribe interstate rates, but could fix reasonable interstate rates throughout its territory, and that the decisions recognizing and defining the state power wholly refuted the contention that the making of such rates either makes a direct burden upon interstate commerce or is repugnant to the Federal Constitution. The court said:

"Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable, or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates. It did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It can not be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to overrule the acustomed authority of the states without the provision of a substitute. On the contrary, the fixing of reasonable rates for interstate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject. *Missouri Pacific*

Railway Co. v. *Larabee Mills,* 211 U. S. 612, 621 (29 Sup. Ct. 214, 53 L. Ed. 352.)"

If counsel for appellant are right in their claim that the order was void because a car of coal or of manure might come over its road from another state, the state would have no power in any case to regulate transportation wholly within its boundaries, as there is no railroad where such a condition does not exist. No such doctrine has been declared or indorsed in any case to which counsel have referred. It is true that if, by reason of the interblending of the interstate and intrastate operations of interstate carriers, adequate regulation of interstate rates cannot be maintained without affecting intrastate rates, Congress is entitled to determine what regulation shall be applied. Such a situation was suggested in *Simpson* v. *Shepard, supra,* and was brought before the court in *Houston East & West Texas Railway Co.* v. *United States,* 234 U. S. 342, Sup. Ct. 833, 58 L. Ed. 1341. In that case the railroad companies had made rates discrinminating in favor of traffic within the State of Texas and against similar traffic between Louisiana and Texas. The Interstate Commerce Commission had found the interstate rates to be unreasonable and had established rates substantially the same as those charged by the carriers for transportation for similar distances in Texas. The Commerce Court dismissed the petitions of the railroad companies to set aside the order, and the Supreme Court affirmed the decree, holding that Congress has the power to prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations, to the

injury of interstate commerce. That principle has no possible application to this case upon the argument of counsel that the rate from Galewood to Morton Grove must in all cases be the same, so that a lower rate will not be charged on intrastate commerce than is charged for interstate commerce. There is in the order no feature of discrimination against interstate commerce.

In *Mulberry Hill Coal Co.* v. *Illinois Central Railroad Co.*, 257 Ill. 80, 100 N. E. 151, the coal company brought the suit for damages for failure to comply with the statute requiring the railroad company to furnish cars within a reasonable time for the transportation of coal. It was agreed at the trial that part of the coal would have been shipped out of the state and part would have been consigned locally to points within the state. The railroad company claimed that the act was void, because repugnant to the commerce clause of the Constitution, and moved the court, at the close of all the evidence, to dismiss the suit. Whether the court erred in refusing to dismiss the suit on the ground that the state had lost all right to require the performance of any duty in intrastate commerce, because the railroad company had extended its line beyond the limits of the state, was the only question involved in the appeal. Our opinion was that the laws of the state governing the duties of railroad companies to furnish cars for transportation of property within the state were not abrogated by an extension of the railroad beyond the limits of the state and the federal control over the interstate commerce carried on over the road. If all power was not so abrogated, then the act was not

void, and the only question concerning interstate commerce related to the measure of damages. A recovery could only have been had for a failure to furnish cars for intrastate transportation, and no damages could be included for a failure to furnish cars for interstate transportation; but the question of the measure of damages was not raised, and the only question presented or argued was whether the state had lost all control over common carriers who did both an intrastate and interstate business.

(4) Counsel for appellant say that the same complaint was made by the Poehlmann Bros. Company to the Interstate Commerce Commission, which upheld the 40-cent rate and dismissed the complaint, and a copy of the opinion of that Commission is included in the argument. Counsel are evidently mistaken. The Poehlmann Bros. Company represented to the Interstate Commerce Commission that a part of the coal used by it came from West Virginia and other sections outside of this state, and complained that the local rate of 40 cents from Galewood to Morton Grove was unreasonable. The appellant was the only party defendant, and the Commission said that the comparisons made by the complainant were in respect to through rates; that the traffic in question was through traffic, although the rate between Galewood and Morton Grove was separately established; and that such a rate could not be considered apart from its relationship to the through rate from interstate points of origin. Neither the through rate nor the carriers responsible for it were before the Commission, and therefore it declined to express any opinion upon the reasonableness of the rate, and did not uphold it or decide anything about it.

(5) It is contended that the order is void because of a failure to give notice to appellant, since the only notice received was that there would be a hearing on the complaint which prayed for the establishment of through rates. The appellant appeared at the hearing, offered such evidence as it chose in support of its answer, and against the allegation that the rate was unreasonable, and, as we have already said, the prayer was not limited to the fixing of through rates.

(6) It is next urged that the order is void, because in conflict with the act forbidding the Commission to enter an order giving one carrier an unfair or unequal advantage over another. The evidence does not tend to show that any advantage was given. Counsel also say that the evidence did not show any discrimination in rates against the petitioner, but that question was not decided by the Commission. In the order the Commission expressly refused to enter upon that question, and merely decided that the rate was unreasonable.

(7) Finally, it is contended that the conclusion of the Commission that the rate was unreasonable was not justified by the evidence. The power to fix rates is legislative, whether exercised by the Legislature directly, or by an administrative body under delegated authority. The fixing of rates is not a judicial function, and the right to review the conclusion of the Legislature or an administrative body is limited to determining whether the board acted within the scope of its authority or the order is without foundation in the evidence, or a constitutional right of the carrier has been infringed upon by fixing

rates which are confiscatory or insufficient to pay the cost of the traffic and return to the carrier a reasonable profit on the investment. *Interstate Commerce Commission* v. *Illinois Central Railroad Co.*, 214 U. S. 452, 30 Sup. Ct. 155, 55 L. Ed. 280; *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Railway Co.*, 218 U. S. 88, 30 Sup. Ct. 651, 54 L. Ed. 946. In this case the Commission acted within the scope of its authority, and the evidence shows that the rate was out of proportion to the rates fixed by the appellant over the same line to Milwaukee—a distance seven times as great as from Galewood to Morton Grove. The order had a substantial basis in the evidence, and there is no ground upon which the court could interfere with the judgment of the Commission.

The judgment is affirmed.

JUDGMENT AFFIRMED.